

- (1) any condition of the personal bond;
- (2) another type of bail bond; or
- (3) a surety or other security.

SECTION 2. This Act takes effect September 1, 2017.

Passed by the House on May 2, 2017: Yeas 144, Nays 0, 2 present, not voting; passed by the Senate on May 19, 2017: Yeas 31, Nays 0.

Approved June 15, 2017.

Effective September 1, 2017.

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**PUBLIC SALE OF REAL PROPERTY UNDER A POWER OF  
SALE IN A SECURITY INSTRUMENT**

**CHAPTER 1012**

H.B. No. 1470

**AN ACT**

**relating to the public sale of real property under a power of sale in a security instrument.**

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Title 2, Business & Commerce Code, is amended by adding Chapter 22 to read as follows:

**CHAPTER 22. PUBLIC SALE OF RESIDENTIAL REAL PROPERTY UNDER  
POWER OF SALE**

**Sec. 22.001. DEFINITIONS.** *In this chapter:*

(1) "Auction company" has the meaning assigned by Section 1802.001, Occupations Code.

(2) "Residential real property" means:

(A) a single-family house;

(B) a duplex, triplex, or quadraplex; or

(C) a unit in a multiunit residential structure in which title to an individual unit is transferred to the owner of the unit under a condominium or cooperative system.

(3) "Security instrument," "substitute trustee," and "trustee" have the meanings assigned by Section 51.0001, Property Code.

**Sec. 22.002. APPLICABILITY.** *This chapter applies only to a public sale of residential real property conducted under a power of sale in a security instrument.*

**Sec. 22.003. CONTRACTS CONCERNING SALE.** *A trustee or substitute trustee conducting a sale to which this chapter applies may contract with:*

(1) an attorney to advise the trustee or substitute trustee or to administer or perform any of the trustee's or substitute trustee's functions or responsibilities under a security instrument or this chapter; or

(2) an auction company to arrange, manage, sponsor, or advertise a public sale.

**Sec. 22.004. INFORMATION FROM WINNING BIDDER.** *(a) A winning bidder at a sale, other than the foreclosing mortgagee or mortgage servicer, shall provide the following information to the trustee or substitute trustee at the time the trustee or substitute trustee completes the sale:*

(1) the name, address, telephone number, and e-mail address of the bidder and of each individual tendering or who will tender the sale price for the winning bid;

(2) *if the bidder is acting on behalf of another individual or organization, the name, address, telephone number, and e-mail address of the individual or organization and the name of a contact person for the organization;*

(3) *the name and address of any person to be identified as the grantee in a trustee's or substitute trustee's deed;*

(4) *the purchaser's tax identification number;*

(5) *a government-issued photo identification to confirm the identity of each individual tendering funds for the winning bid; and*

(6) *any other information reasonably needed to complete the trustee's or substitute trustee's duties and functions concerning the sale.*

(b) *If a winning bidder required to provide information under Subsection (a) fails or refuses to provide the information, the trustee or substitute trustee may decline to complete the transaction or deliver a deed.*

Sec. 22.005. **RECEIPT AND DEED.** *The trustee or substitute trustee shall:*

(1) *provide the winning bidder with a receipt for the sale proceeds tendered; and*

(2) *except when prohibited by law, within a reasonable time:*

(A) *deliver the deed to the winning bidder; or*

(B) *file the deed for recording.*

Sec. 22.006. **SALE PROCEEDS.** (a) *The trustee or substitute trustee shall ensure that funds received at the sale are maintained in a separate account until distributed. The trustee or substitute trustee shall cause to be maintained a written record of deposits to and disbursements from the account.*

(b) *The trustee or substitute trustee shall make reasonable attempts to identify and locate the persons entitled to all or any part of the sale proceeds.*

(c) *In connection with the sale and related post-sale actions to identify persons with legal claims to sale proceeds, determine the priority of any claims, and distribute proceeds to pay claims, a trustee or substitute trustee may receive:*

(1) *reasonable actual costs incurred, including costs for evidence of title;*

(2) *a reasonable trustee's or substitute trustee's fee; and*

(3) *reasonable trustee's or substitute trustee's attorney's fees.*

(d) *A fee described by Subsection (c):*

(1) *is considered earned at the time of the sale;*

(2) *may be paid from sale proceeds in excess of the payoff of the lien being foreclosed; and*

(3) *is conclusively presumed to be reasonable if the fee:*

(A) *is not more than the lesser of 2.5 percent of the sale proceeds or \$5,000, for a trustee's or substitute trustee's fee; or*

(B) *is not more than 1.5 percent of the sale proceeds, for trustee's or substitute trustee's attorney's fees incurred to identify persons with legal claims to sale proceeds and determine the priority of the claims.*

(e) *A trustee or substitute trustee who prevails in a suit based on a claim that relates to the sale and that is found by a court to be groundless in fact or in law is entitled to recover reasonable attorney's fees necessary to defend against the claim, which may be paid from the excess sale proceeds, if any.*

(f) *Nothing in this section precludes the filing of an interpleader action or the depositing of funds in a court registry.*

SECTION 2. Section 1802.001, Occupations Code, is amended by adding Subdivision (14) to read as follows:

(14) "Security instrument," "substitute trustee," and "trustee" have the meanings assigned by Section 51.0001, Property Code.

SECTION 3. Section 1802.002(a), Occupations Code, as amended by Chapters 777 (H.B. 2481) and 1230 (S.B. 1982), Acts of the 84th Legislature, Regular Session, 2015, is reenacted and amended to read as follows:

(a) This chapter does not apply to:

(1) a sale conducted by order of a United States court under Title 11, United States Code;

(2) a sale conducted by an employee of the United States, this state, or a political subdivision of this state in the course and scope of employment;

(3) a sale conducted by a charitable, religious, or civic organization, including an organization having a tax exempt status under Section 501(c), Internal Revenue Code of 1986, or organized as a nonprofit entity, if the person organizing, arranging, or conducting the auction receives no compensation;

(4) a foreclosure *involving the sale of real property personally conducted by a trustee or substitute trustee under a security instrument* ~~(under a deed of trust)~~;

(5) a foreclosure sale of personal property personally conducted by:

(A) a person who holds a security interest in the property, including a mortgage; or

(B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:

(i) the employee or agent is not otherwise engaged in the auction business; and

(ii) all property for sale in the auction is subject to a security agreement;

(6) a sale conducted by sealed bid without the option of increasing or decreasing the amount of a bid;

(7) an auction conducted only for student training purposes as part of a course of study approved by the department;

(8) an auction conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;

(9) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association;

(10) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:

(A) is part of a fair that is organized under state, county, or municipal authority; and

(B) involves only the sale of property owned by the organization's members;

(11) a sale or auction conducted by an auctioneer while the auctioneer is physically located outside of this state;

(12) a sale of motor vehicles at auction by a person licensed under Chapter 2301 or 2302;

(13) a sale of motor vehicles at auction by a person who holds a wholesale motor vehicle auction general distinguishing number or an independent motor vehicle general distinguishing number issued by the Texas Department of Motor Vehicles; or

(14) an auction of property through the Internet.

SECTION 4. The changes in law made by this Act apply only to a sale for which the notice of sale is given under Section 51.002, Property Code, on or after the effective date of this Act. A sale for which the notice of sale is given before the effective date of this Act is governed by the law applicable to the foreclosure sale immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 6. This Act takes effect September 1, 2017.

Passed by the House on April 13, 2017: Yeas 137, Nays 1, 3 present, not voting; passed by the Senate on May 24, 2017: Yeas 30, Nays 1.

Approved June 15, 2017.

Effective September 1, 2017.

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**A WRIT OF MANDAMUS BY A COURT OF APPEALS AGAINST  
AN ASSOCIATE JUDGE IN CERTAIN CASES**

**CHAPTER 1013**

H.B. No. 1480

**AN ACT**

**relating to a writ of mandamus by a court of appeals against an associate judge in certain cases.**

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 22.221(b), Government Code, is amended to read as follows:

(b) Each court of appeals for a court of appeals district may issue all writs of mandamus, agreeable to the principles of law regulating those writs, against [a]:

(1) a judge of a district or county court in the court of appeals district; ~~or~~

(2) a judge of a district court who is acting as a magistrate at a court of inquiry under Chapter 52, Code of Criminal Procedure, in the court of appeals district; *or*

(3) *an associate judge of a district or county court appointed by a judge under Chapter 201, Family Code, in the court of appeals district for the judge who appointed the associate judge.*

SECTION 2. Section 22.221(b), Government Code, as amended by this Act, applies only to a suit filed under Chapter 45, Title 1, Title 4, or Title 5, Family Code, on or after the effective date of this Act. A suit filed under Chapter 45, Title 1, Title 4, or Title 5, Family Code, before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2017.

Passed by the House on May 9, 2017: Yeas 145, Nays 1, 1 present, not voting; passed by the Senate on May 24, 2017: Yeas 31, Nays 0.

Approved June 15, 2017.

Effective September 1, 2017.

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**ABOLITION OF THE FEE ESTABLISHED BY THE  
COMMISSIONER OF THE GENERAL LAND OFFICE FOR  
PROCESSING APPLICATIONS FOR TERMINAL FACILITY  
DISCHARGE PREVENTION AND RESPONSE CERTIFICATES**

**CHAPTER 1014**

H.B. No. 1481

**AN ACT**

**relating to the abolition of the fee established by the commissioner of the General Land Office for processing applications for terminal facility discharge prevention and response certificates.**